United Nations CERD/C/AZE/CO/7-9

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventh to ninth periodic reports of Azerbaijan*

1. The Committee considered the combined seventh to ninth periodic reports of Azerbaijan (CERD/C/AZE/7-9), submitted in one document, at its 2434th and 2435th meetings (see CERD/C/SR.2434 and 2435), held on 3 and 4 May 2016. At its 2445th meeting, held on 12 May 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined seventh to ninth periodic reports of the State party, which include responses to the concerns raised by the Committee in its previous concluding observations. The Committee wishes to commend the regularity in reporting and welcomes the open and constructive dialogue with the State party's high-level delegation. The Committee also welcomes the reassurance by the delegation about the State party's readiness to fully implement the Convention.

B. Factors and difficulties impeding the implementation of the Convention

3. The Committee notes that the protracted conflict in the Nagorno-Karabakh region remains an impediment to the exercise and enjoyment of the rights enshrined in the Convention. It encourages the State party to continue to make every effort to seek a peaceful settlement to the conflict.

C. Positive aspects

4. The Committee welcomes the legislative, institutional and other measures taken by the State party during the reporting period, in particular:

(a) The activities undertaken in 2016 to celebrate the twentieth anniversary of the State party's accession to the Convention;

(b) The adoption of the law on citizens' appeals;

* Adopted by the Committee at its eighty-ninth session (25 April-13 May 2016).

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(c) The implementation of the 2004 State programme and other activities that have significantly improved the living conditions of internally displaced persons;

(d) The implementation of successive plans of action to combat trafficking;

(e) The implementation of initiatives aimed at promoting multiculturalism, such as the establishment of the Baku International Multiculturalism Centre in 2014 and the designation of 2016 as the year of multiculturalism;

(f) The hosting of international events such as the biennial forum on intercultural dialogue and the Seventh Global Forum of the United Nations Alliance of Civilizations, held from 25 to 27 April 2016.

D. Concerns and recommendations

Definition of racial discrimination

5. Notwithstanding the fact that the Convention forms part of the State party's domestic law, the Committee notes with concern that only those acts of racial discrimination described in the restrictive provisions of articles 109, on discrimination, and 154, on infringement of citizens' equality, of the Criminal Code and are explicitly prohibited and carry penalties (art. 1).

6. **The Committee urges the State party to introduce in its administrative, civil and criminal legislation a definition of "racial discrimination" that is consistent with article 1 of the Convention and to ensure that all manifestations of racial discrimination, both direct and indirect, are prohibited and punished.**

Special measures

7. The Committee is concerned that special measures are not allowed in all circumstances in the State party based on an interpretation of article 25 (IV) of the Constitution that prohibits the granting of allowances or privileges on grounds such as race, nationality or language (arts. 1, 2 and 4).

8. **The Committee recommends that the State party amend its legislation with a view to allowing the implementation of special measures for the purpose of securing adequate advancement of disadvantaged minority groups or individuals in conformity with article 1 (4) of the Convention. In this regard, the Committee refers the State party to its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.**

Civil society organizations

9. Noting that the State party's report, as mentioned in its paragraph 7, was drafted in cooperation with civil society institutions and that over 40 non-governmental organizations "related to ethnic minorities" (see CERD/C/AZE/7-9, para. 163) are registered in the State party, the Committee regrets that no representative of those organizations took part in the dialogue with the Committee (art. 2).

10. **The Committee recommends that the State party facilitate and encourage the critical monitoring of the implementation of the Convention by civil society organizations, especially those working on the protection and promotion of the rights of ethnic minorities, migrants, refugees and asylum seekers, and promote their active participation in the dialogue thereon.**

Article 4

11. The Committee is concerned that the State party's legislation, in particular the provisions of articles 111 and 283 of the Criminal Code, as well as those of the Law on Political Parties, the Law on Trade Unions and the Law on Non-Governmental Organizations, does not meet the requirements of article 4 of the Convention (art. 4).

12. **Bearing in mind its general recommendations No. 7 (1985) on the implementation of article 4, No. 8 (1990) on the interpretation and application of article 1 (1) and (4) of the Convention and No. 15 (1993) on article 4 of the Convention, the Committee urges the State party to bring the relevant legal provisions into line with the requirements of article 4, including by prohibiting and punishing, among other things, the dissemination of ideas based on racial superiority, the provision of assistance to racist activities, propaganda activities promoting and inciting racial discrimination, the participation in organizations and activities promoting and inciting racial discrimination and the incitement to racial hatred, irrespective of the means of dissemination and whether committed in private or in public. The Committee also urges the State party to review the qualification of dissemination and incitement as punishable offences and the determination of related criminal or other sanctions, taking into account contextual factors. In that regard, the Committee draws the attention of the State party to general recommendation No. 35 (2015) on combating racist hate speech.**

Enforcement of hate crime law

13. The Committee is concerned that the provisions of article 283 of the Criminal Code on incitement to racial hatred have been misused to arrest individuals that have expressed opinions diverging from official positions, including on the Nagorno-Karabakh conflict, or spoken out about the conditions of members of ethnic minorities. The Committee notes the information provided by the delegation that two such individuals have been pardoned. The Committee is also concerned that provisions of the same article punishing "humiliation of national dignity" may be subject to arbitrary interpretations (arts. 4 and 5).

14. **The Committee recommends that the State party ensure that measures to monitor and combat racist speech should not be used as a pretext to silence those who protest at injustice, social discontent or opposition. The Committee also recommends that the State party train law enforcement and judicial officials on the meaning of racist hate speech and incitement to racial hatred under the Convention. In that respect, the Committee recalls its general recommendation No. 35, in which it noted that the expression of opinions about historical facts should not be prohibited or punished and that opinions expressed in the context of academic debates, political engagement or similar activity, and without incitement to hatred, contempt, violence or discrimination, should be regarded as legitimate exercises of the right to freedom of expression, even when such ideas are controversial. In addition, speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions.**

15. The Committee is concerned that, by welcoming a citizen of the State party convicted of murdering an Armenian as a national hero and by pardoning and releasing that person upon transfer, the State party condones racial hatred and hate crimes and denies redress to victims (arts. 4-6).

16. **The Committee calls on the State party to collaborate fully with the European Court of Human Rights regarding application No. 17247/13 (*Hayk Makuchyan and Samvel Minasyan v. Azerbaijan and Hungary*).**

Status of the Convention in the domestic legal order

17. The Committee is very concerned at the fact that the first and appellate courts of the State party have not referred to the provisions of the Convention during the reporting period, in spite of shortcomings in domestic legislation against racial discrimination and activities undertaken by the State party to raise awareness of the Convention (arts. 2 and 5).

18. **The Committee urges the State party to strengthen efforts to raise awareness of the Convention among the judiciary and the public, including of the fact that, under the State party's Constitution, the Convention may be directly invoked by courts. The Committee recommends that the State party translate the Constitution, the Convention and other major international instruments into minority languages, including the Talysh and Lezgin languages. The Committee invites the State party to include in its next periodic report information on the application of the Convention by domestic courts.**

Complaints of racial discrimination

19. The Committee is concerned that the State party has not taken measures to examine why there have been very few complaints of racial discrimination, as recommended by the Committee. It expresses once again its concern at the near absence of court cases and complaints lodged with the Ombudsperson relating to racial discrimination during the reporting period (arts. 2 and 6).

20. **The Committee reiterates that no country is free from racial discrimination and calls again on the State party to address the causes of the very low number of complaints of racial discrimination. The Committee recommends that the State party raise awareness among the population in particular about the various manifestations of racial discrimination that are prohibited and about avenues for lodging complaints. Moreover, it recommends that the State party conduct surveys to collect information on inter-ethnic relations and racial discrimination, including stereotypes, and use their findings to assess the effectiveness of remedies available to victims of racial discrimination and awareness of their rights. The Committee requests the State party to provide in its next report updated information on complaints about acts of racial discrimination and on relevant decisions in penal, civil or administrative proceedings.**

Legal protection on the rights of groups vulnerable to racial discrimination

21. The Committee is concerned at the absence of legislation enabling the implementation of the provisions of the Convention and the State party's Constitution aimed at preventing the discrimination of persons belonging to minorities on the grounds of race, colour, descent and national or ethnic origin (arts. 1, 2 and 5).

22. **The Committee recommends that the State party expedite the adoption of a law aimed at guaranteeing the non-discriminatory enjoyment of rights and freedoms by the groups affected by the Convention, at providing the means for achieving the protection of those rights and at monitoring progress. The Committee refers the State party to its general recommendation No. 20 (1996) on article 5 of the Convention, which deals with the non-discriminatory implementation of rights and freedoms.**

Information on the situation of members of ethnic minorities

23. The Committee notes with regret the discrepancies in various data available on the ethnic composition of the State party, as well as reports that members of certain minorities conceal their ethnic identity to avoid discrimination. Moreover, the Committee regrets the paucity of data on the enjoyment of economic and social rights by persons belonging to the

various ethnic minorities, as the State party does not collect data on the basis of ethnicity (art. 5).

24. **Reminding the State party that it can only fully ascertain that there is equal enjoyment of rights among members of the various ethnic groups through statistical data disaggregated by ethnicity, the Committee recommends that the State party collect information and generate disaggregated data, on the basis of self-identification, on the situation of ethnic groups with a view to identifying and assessing the extent of possible inequality and discrimination in areas such as employment, education, housing, health and standard of living. In that regard, the Committee draws the attention of the State party to its general recommendation No. 24 (1999) concerning article 1 of the Convention and to the guidance note by the Office of the United Nations High Commissioner for Human Rights on a human-rights based approach to data, in which the Office elaborates on methods and approaches for collecting data.**

Instruments of consultation and dialogue

25. The Committee is concerned at the limited effectiveness of existing consultative bodies to compensate for the underrepresentation of ethnic minorities in political bodies. The Committee is equally concerned that, while the Office of the Ombudsperson holds regular meetings with representatives of several ethnic minorities, there is no such meeting with representatives of ethnic Armenians in the State party (art. 5).

26. **The Committee recommends that the State party establish effective instruments of consultation and dialogue with ethnic minorities to ensure that their views and concerns are taken into consideration in debates on issues affecting them. The Committee also recommends that the Ombudsman engage with all ethnic minorities without discrimination. Moreover, the Committee calls upon the State party to widen the mandate of the Ombudsman so that it can also attend to violations of rights and freedoms by private actors.**

Inflammatory speech by politicians

27. The Committee expresses concern at the repeated and unpunished use of inflammatory language by politicians speaking about the Nagorno-Karabakh conflict and at its adverse impact on the public's view of ethnic Armenians in the State party (arts. 4, 5 and 7).

28. **The Committee urges the State party to condemn and investigate, where appropriate, statements by politicians that vilify or incite racial hatred against any ethnic minority and to prosecute those responsible. It also calls upon the State party to strengthen efforts to promote tolerance and to combat existing stereotypes and prejudices against any ethnic minority.**

People of African descent

29. The Committee regrets the lack of information on the size and the situation of migrants, asylum seekers, students and football players of African origin in the State party, as well as the lack of information on measures taken to prevent Afrophobia, including in law enforcement and at borders. The Committee also notes with concern the unclear visa requirements for Africans and people of African descent, which, at times, result in undue delays at immigration.

30. **The Committee recommends that the State party gather information on the size and situation of the community of persons of African descent in the State party. Moreover, in the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and**

Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Identity papers and statelessness

31. As the lack of identity papers limits access to services, rights and entitlements and renders those without such papers vulnerable to statelessness, the Committee is concerned at the requirement in the State party for parents to present residence registration papers before the issuance of a birth certificate for their child. The Committee is also concerned at the absence of procedures for statelessness determination and for the issuance of identity papers to stateless persons (arts. 1 and 5).

32. **The Committee recommends that the State party make the legislative and regulatory amendments necessary to ensure that all children born in the State party are issued with a birth certificate, irrespective of the legal status of the parents or the ability to present residence registration papers. Moreover, it recommends that the State party intensify efforts to identify stateless persons and adopt a legislative framework providing procedures for the registration, documentation and access to citizenship for stateless persons.**

Migrant workers

33. While noting the legal safeguards in place, such as the prohibition of the confiscation of passports by employers, the Committee is concerned that migrant workers are vulnerable to abuse and exploitation as work permits tie them to their employers. The Committee is also concerned at legal provisions that make it possible for children enrolled in school to be expelled from the State party together with their families (art. 5).

34. **The Committee recommends that the State party replace the work permit, which ties a migrant worker to an employer, with a residency permit or another system that reduces migrant workers' vulnerability to exploitation and abuse by their employers. It also recommends that the State party ensure that families with children enrolled in schools are not subject to expulsion during the school year.**

Human rights defenders and journalists

35. Bearing in mind the important role that human rights defenders and journalists play in the protection of human rights, including the rights enshrined in the Convention, the Committee is concerned that they are intimidated and arrested in the State party. The Committee also notes that several of human rights defenders and journalists have been pardoned and released in 2016 (arts. 2 and 5).

36. **The Committee urges the State party to protect human rights defenders and journalists from any act of intimidation or reprisal or any other impediments to their work, and to release those who are still in detention for the performance of their profession.**

E. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

37. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

Consultations with civil society

38. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Amendment to article 8 of the Convention

39. **The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Common core document

40. **The Committee encourages the State party to update its common core document, which dates to 2008, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.**

Follow-up to the present concluding observations

41. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 32 and 34 above.**

Paragraphs of particular importance

42. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6, 12, 24 and 26 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Dissemination of information

43. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

44. The Committee recommends that the State party submit its combined tenth to twelfth periodic reports, as a single document, by 15 September 2019, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.